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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,538	08/16/2006	Klaus Abraham-Fuchs	32860-001070/US	8501
30596	7590	05/25/2011	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			WINSTON III, EDWARD B	
P.O.BOX 8910			ART UNIT	PAPER NUMBER
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NOTIFICATION DATE		DELIVERY MODE		
05/25/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief		Application No. 10/589,538	Applicant(s) ABRAHAM-FUCHS ET AL.
		Examiner EDWARD WINSTON	Art Unit 3686
<p>–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED <u>18 April 2011</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>3</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: <u>NONE</u></p> <p>Claim(s) objected to: <u>NONE</u></p> <p>Claim(s) rejected: <u>1-9 and 12-20</u></p> <p>Claim(s) withdrawn from consideration: <u>NONE</u></p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u></p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____</p>			

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the argument of "premature finality," applicant's argument that the amendment of 8/24/2010 contained no changes to the claims is irrelevant, as the outstanding Office action of 3/3/2011 was not responsive to that reply, but to applicant's reply of 3/11/2010, as clearly set forth on the Office Action Summary page of the 3/3/2011 Office action, and as the Office action of 12/20/2010 had indicated would be done. Applicant's reply of 8/24/2010 was merely an "after-final" reply correctly pointing out that the previous final rejection of 6/24/2010 was improper (for failing to meet all the limitations of the newly amended claims, not for improperly adding any new grounds of rejection).

There was no issue with the original first action Non Final rejection. The finality was withdrawn because it was agreed that the 102(e) rejection did not cover each and every limitation AFTER the original Final Office action on Applicants amended claims. The amended claims were able to overcome the 35 U.S.C. 101 and the 35 U.S.C. 102(e) rejections. The withdrawal of the Final Office action does not restart the examination process, it just gives the Applicant a fair opportunity to have the application examined and considered properly.

Regarding the currently outstanding prior art rejection, as correctly noted by applicant, the Office action included a typographical error, in that the statement of rejection for claims 1-7 and 10-20 mentioned "35 U.S.C. 102(e)" should of course have been --35 U.S.C. 103(a)--, consistent with the section heading and content/substance of the rejection. The Office appologizes for any confusion this error may have caused.

Regarding the merits of the currently outstanding prior art rejection, the examiner believes that the prior art of record used in the 35 U.S.C. 103(a) rejection teaches each and every limitation of the claimed invention, and that proper motivation exists for combining the prior art references, and therefore, that a proper *prima facie* case for obviousness has been set forth in the outstanding Office action.